

5684

PUBLIC WORKS, SUPERINTENDENT — NO POWER TO ISSUE PERMITS GRANTING AUTHORITY TO CROSS HARBORS AND RIVER MOUTHS IN LAKE ERIE WITH PIPE LINES OR ELECTRIC TRANSMISSION LINES — MAY NOT GRANT AUTHORITY TO CONSTRUCT OR REBUILD DOCKS, FENDER PILING, JETTIES, PIERS, BREAKWATERS AND THE LIKE IN LAKE ERIE OR RIVERS THAT EMPTY INTO IT.

SYLLABUS

The superintendent of public works possesses no power to issue permits granting authority to cross harbors and river mouths in Lake Erie with pipe lines and electric transmission lines, or for the construction or rebuilding of docks, fender piling, jetties, piers, breakwaters and the like in Lake Erie or in rivers emptying into Lake Erie.

Columbus, Ohio, December 16, 1942.

Hon. Frank L. Raschig,
Superintendent of Public Works,
Columbus, Ohio.

Dear Sir:

You have requested my opinion as follows:

“The United States War Department, through its district engineer offices, located at Buffalo, New York and Detroit, Michigan, sends notices to this office of applications which have been received from individuals and corporations for the construction of wharves, jetties, piers, breakwaters, etc., to extend lakeward from the shores of Lake Erie within the limits of the State of Ohio.

Some of the applications for permits cover the crossing of harbors and river mouths with pipe lines and transmission lines. Other applications for permits, particularly in the Cuyahoga River at Cleveland, Ohio, provide for the rebuilding of docks and the construction of fender piling.

Your opinion is requested as to whether it is within the jurisdiction of this department to grant the applicant a permit which gives the consent of the State of Ohio to the contemplated work, in addition to any authority which may be granted by the United States Government. If this department does not have the authority to grant such permits, to what extent can this department condition the permits.”

The superintendent of public works, like other officers, has only such powers as are expressly granted to him by the Constitution and laws of this state and such as are impliedly necessary to carry into effect those expressly granted. See *Peter v. Parkinson*, 83 O.S., 36; *State, ex rel. Bentley & Sons Company, v. Pierce*, 96 O.S., 44; and *Frisbee Company v. East Cleveland*, 98 O.S., 266.

I have therefore examined the Constitution and statutes of this state to determine whether the superintendent of public works is given power to issue permits for the purposes mentioned in your letter. The office of superintendent of public works was created by Section 12 of Article VIII of the Constitution of Ohio which provides:

“So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law.”

The former board of public works to which this section of the Constitution refers was not given any power by either the Constitution or statutes to issue permits of the nature mentioned in your letter, and therefore the quoted section of the Constitution does not confer any such power upon the superintendent of public works.

None of the statutes with respect to the powers and duties of the superintendent of public works purports to grant him authority to issue permits for construction, repairs or rebuilding of the character mentioned in your letter. The section of the statutes which comes closest to granting such authority to the superintendent of public works is Section 412-29, General Code, which provides:

“All laws providing for the control and management of the public works of Ohio by the superintendent of public works are hereby made effective as to the provisions of this act in so far as the same are applicable. Provided however, that such laws shall have no application to littoral and/or submerged lands; (1) within or adjacent to municipal corporations to which the State of Ohio has delegated certain powers and duties by (a) Article 18, Section 7 of the Constitution or (b) the following acts: 107 Ohio Laws 587 — (G.C. sections 3699a-3699-9 inclusive), 107 Ohio Laws 581, 111 Ohio Laws 417 — (G.C. 3699-10), 113 Ohio Laws 505; and (2) in or adjacent to harbors or bays on lake Erie in which the United States govern-

ment has established harbor lines or between now existing breakwaters constructed by the United States government and a line, extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line, provided, however, that nothing in this section shall prohibit the superintendent of public works from cooperating with a municipality, upon its request so to do, in preventing erosion or improving a harbor within the jurisdiction of such municipality." (Emphasis mine.)

An examination of the laws providing for the control and management of the public works of Ohio by the superintendent of public works has failed to disclose any provision therein which grants to the superintendent of public works any such powers as those now in question. Even if they did, it might well be doubted as to whether the legislature would have intended by the emphasized language to make them applicable to Lake Erie, for the act of which Section 412-29, General Code, supra, is a part, deals with erosion control. The construction of pipe lines, overhead electric transmission lines and docks could certainly have nothing to do with the control of erosion.

For these reasons, I am of the opinion that the superintendent of public works possesses no power to issue permits granting authority to cross harbors and river mouths in Lake Erie with pipe lines and electric transmission lines, or for the construction or rebuilding of docks, fender piling, jetties, piers, breakwaters and the like in Lake Erie or in rivers emptying into Lake Erie.

Respectfully,

THOMAS J. HERBERT
Attorney General.